

FILE

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

JUN 17 2008

OFFICE OF
MANAGING DIRECTOR

Jerry Symons
Vice President/General Manager
Jerdon Broadcasting Company
Post Office Box 1180
Jacksonville, Illinois 62651

Re: Jerdon Broadcasting Company
Stations WLDS-AM and WEA1-FM.
Request for Waiver of Late Payment Penalty
for FY 2007 Regulatory Fee
Fee Control No. 0710058835116007

Dear Mr. Jerdon:

This is in response to your letter (*Request*) on behalf of Jerdon Broadcasting Company (JBC), licensee of Stations WLDS-AM and WEA1-FM, for waiver of the penalty for late payment of the Fiscal Year (FY) 2007 regulatory fee. Our records reflect that you have paid the \$1,895.00 regulatory fee at issue here, but not the \$473.75 penalty. For the reasons stated herein, we deny your request.

You assert that JBC sent "the required forms and . . . full regulatory fees . . . by Certified Mail [on September 13, 2007,] well before the [September 19, 2007] deadline."¹ You state that "[p]ostal employees in Jacksonville assured us the Certified Mail item should arrive at its destination 'within 2 or 3 days[.]'"² You say that you "believe it fair to assume that our . . . Certified Mail envelope should have reached you in less than six days."³

The Communications Act of 1934, as amended, requires the Commission to assess a penalty of 25 percent on any regulatory fee not paid in a timely manner.⁴ It is the obligation of the licensees responsible for regulatory fee payments to ensure that the Commission receives the fee payment no later than the final date on which regulatory fees are due for the year.⁵

¹ *Request* at 1; see also Email from WLDS to Sherry Elkheshin (Nov. 13, 2007).

² *Id.*

³ *Id.*

⁴ 47 U.S.C. §159(c)(1).

⁵ See 47 C.F.R. §1.1164.

Your assertion that JBC mailed the FY 2007 regulatory fee payment in a timely manner on September 13, 2007, and that postal employees assured JBC that the payment would arrive in two or three days provides neither proof that the Commission received the regulatory fee payment by the September 19, 2007, filing deadline⁶ nor, under the circumstances, support for a waiver of the late payment penalty. As the Commission stated in *Aerco Broadcasting Corp.*, 16 FCC Rcd 15042, 15043 (2001), section 1.1158 of the Commission's rules

permits payment of regulatory fees in forms that would not be affected by extrinsic factors, such as the uncertainties associated with the timing of mail delivery or the possibility of approaching weather conditions that might slow delivery. [Footnote omitted.] The rules allow electronic transfer of funds, thus providing greater certainty of timely delivery. This permits licensees to account for individual circumstances in choosing how to meet their obligations to make payment in a timely manner.

Because the Commission's rules permit payment of regulatory fees by methods other than mailing, including accessible methods such as electronic transfer,⁷ your claim that the fee was mailed in a timely manner fails to establish the extraordinary circumstances that would justify a waiver of the penalty for late payment of the FY 2007 regulatory fee. Further, although you may not have been aware of or fully understood the Communications Act or the Commission's rules regarding regulatory fees, the Commission has repeatedly held that "[l]icensees are expected to know and comply with the Commission's rules and regulations and will not be excused for violations thereof, absent clear mitigating circumstances."⁸

Because your request does not indicate or substantiate that JBC submitted the \$1,895.00 FY 2007 regulatory fee by the September 19, 2007, filing deadline, we deny your request for waiver of the late payment penalty.⁹ Payment of the \$473.75 penalty for late payment of the FY 2007 regulatory fee is now due. The penalty should be submitted, together

⁶ See *Public Notice, FY 2007 Regulatory Fees Due No Later Than September 19, 2007* (Aug. 13, 2007); *Public Notice, Fee Filer Now Available for Regulatory Fees*, 22 FCC Rcd 16051, 16051 (Aug. 23, 2007).

⁷ Additional information regarding payment by electronic transfer can be found at <http://www.fcc.gov/fees/electran.html>.

⁸ See *Sitka Broadcasting Co., Inc.*, 70 FCC 2d 2375, 2378 (1979), citing *Lowndes County Broadcasting Co.*, 23 FCC 2d 91 (1970) and *Emporium Broadcasting Co.*, 23 FCC 2d 868 (1970).

⁹ Our records indicate that the Commission received JBC's \$1,895.00 FY 2007 regulatory fee on September 24, 2007.

Mr. Jerry Symons

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with a Form 159 (copy enclosed), within 30 days of the date of this letter. If you have any questions concerning this matter, please contact the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Stephens', with a stylized flourish at the end.

Mark Stephens
Chief Financial Officer

Enclosure



P. O. Box 1180, Jacksonville, Illinois 62651 • (217) 245-7171 • (217) 245-6711

FCC
RROG Department

0710058835116007

Purpose of this writing is to formally request the removal of penalty for late regulatory fee payment by Jerdon Broadcasting Company (WLDS/WEAI Radio).

As I explained in a previous e-mail, Jerdon Broadcasting Company completed the required forms and enclosed full regulatory fees payment of \$1,895 and sent all this by Certified Mail well before the deadline.

The Certified Mail envelope was sent from Jacksonville, Illinois, on September 13, 2007, which was six days ahead of the September 19th deadline for the payment to be received at the P.O. Box in Pittsburgh, PA.

Postal employees in Jacksonville assured us the Certified Mail item should arrive at its destination "within 2 or 3 days", which would be well before the deadline.

Thus, I would hope there would be understanding that our intent was to pay the full required amount ahead of the deadline.

Incidentally, your notice of assessed penalty arrived here two days after the postage date was applied in Washington, DC. Thus, a routine 41¢ stamp brought your envelope to us in two days, and I believe it fair to assume that our \$5.21 Certified Mail envelope should have reached you in less than six days.

I'm asking that you remove the penalty of \$473.75

Thank you for your consideration.

Sincerely,

Jerry Symons
Vice President/General Manager
Jerdon Broadcasting Company (WLDS/WEAI Radio)